IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5525 of 2007()

CRIME NO.25/2007 OF EXCISE RANGE, KOZHIKODE

: PETITIONER/2ND ACCUSED:

PRAMOD K.K., AGED 35 YEARS,
S/O. CHATHU,KURUPPASANKANDI HOUSE,MADATHIL PARAMBU
P.O. MARYKUNNU, KOZHIKODE.

BY ADV. SMT.T.KAMALA MENON

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTING EXCISE INSPECTOR, KOZHIKODE THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5525 of 2007

Dated this the 12th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. Altogether there are 2 accused persons. 3 litres of arrack was allegedly seized from the possession of the 1st accused on 29.08.07. The prosecution gathered that the contraband liquor was entrusted to the 1st accused by the petitioner herein. The seizure mahazar and the occurrence report clearly show the involvement of the petitioner in the crime. The petitioner has criminal antecedents. He is an accused in another crime under the Kerala Abkari Act, submits the learned Public Prosecutor. Investigation is in progress. The petitioner has not been arrested so far. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He was not present when the seizure was effected. Merely on the statement of the co-accused, the petitioner is being proceeded against. In these circumstances, anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available indications

do point to the complicity of the petitioner. At any rate, there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C in favour of the petitioner. The petitioner, submits the learned Public Prosecutor, must appear before the Investigating Officer or the learned Magistrate and then seek regular bail.

4. Having considered all the relevant inputs, I find force in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is an eminently fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the normal and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-